

REMARKS**Summary**

This paper is filed in response to the Office Action mailed on December 2, 2002 ("Office Action"). After entry of the amendment contained herein, claims 1-40 are pending. Claims 3, 7, 10, 11, 16, 17, 24 and 26 are amended herein and claim 41 is cancelled herein. Claims 2, 4-6, 8, 9, 12-15, 18-23, 25 and 27-40 are the original claims.

Allowable Claims

Examiner states at page 14 of the Office Action that claim 12 is allowed.

Examiner also states at page 14 of the Office Action that claims 3 and 10-11 would be allowable if rewritten to overcome the § 112 ¶ 2 rejections discussed herein. Applicant has addressed these rejections and respectfully requests immediate allowance of claims 3 and 10-11.

Examiner also states at page 14 of the Office Action that claims 14, 33, 37 and 40 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form. However, Applicant herein argues the patentability of the rejected base claims and reserves the right to rewrite the rejected claims to incorporate the limitations of the respective base claims.

Objections

In the Office Action at pp. 3 - 4, ¶¶ 2-5, Examiner objects to the drawings stating that they fail to comply with 37 C.F.R. §§ 1.84(p)(5), 1.83(a) and 1.84(p)(4). In response, Applicant respectfully submits corrected drawings and amendments to the specification. No new matter

has been added and Applicant believes that all of Examiner's stated concerns have been addressed.

In the Office Action at p. 4, ¶ 5, Examiner objects to the drawings, stating that the drawings fail to comply with 37 C.F.R. § 1.83(a) and referencing various features of the invention for claims 2, 3, 5, 12, 15 and 37. Applicant respectfully traverses this objection because drawings are not necessary to understand the subject matter to be patented. See 35. U.S.C. § 113. The claim features that Examiner states need to be shown in a drawing (e.g. a tractor) are adequately disclosed in the specification and original-filed claims for one of ordinary skill in the art to understand the subject matter to be patented. For at least this reason, Applicant respectfully requests Examiner to withdraw the objection.

In the Office Action at p. 5, ¶ 6, Examiner states that the word "desirable" should be amended to read "desirably". Applicant respectfully submits an amendment incorporating this change.

In the Office Action at p. 5, ¶ 7, Examiner states that the specification lacks antecedent basis for the recitation of "sinuous" in claims 2 and 12. Applicant respectfully traverses the objection. Applicant understands the term "sinuous" to mean "characterized by lithe movement" and hence believes that the specification clearly provides antecedent basis. Applicant respectfully requests that Examiner withdraw the objection and consider claims 2 and 12 on their merit.

In the Office Action at p. 5, ¶ 7, Examiner refers to claims 2 and 7, stating that the specification lacks antecedent basis for the spacing between the bars. Applicant respectfully traverses this objection. Claims 2 and 7 are the originally filed claims and hence are self-disclosing. Antecedent basis for claims 2 and 7 can thus at least be found in the claims

themselves. For at least this reason, Applicant respectfully requests that Examiner withdraw the objection and consider claims 2 and 7 on their merit.

In the Office Action at p. 5, ¶ 7, Examiner refers to claim 26, stating that the specification lacks antecedent basis for “only some of said finger members are rigid.” Applicant submits an amendment to claim 26 and respectfully requests that Examiner consider amended claims 26 on its merit.

In the Office Action at p. 5, ¶ 7., Examiner refers to claim 30, stating that the spacing bar cannot separately adjust forward and rearward positions. Applicant respectfully traverses the objection and believes that antecedent basis is found at least in the specification p. 19, first paragraph (the paragraph that began on p. 18). Applicant respectfully requests consideration of claim 30 on the merits.

In the Office Action at p. 5, ¶ 7, Examiner refers to claim 31, stating that lines 1-5 of claim 31 are not disclosed. Applicant respectfully traverses the objection and believes that antecedent basis is found at least in the specification p. 13, first complete paragraph. Applicant respectfully requests consideration of claim 30 on the merits.

In the Office Action at p. 6, ¶ 8, Examiners objects to claim 16 for not having a period at the end of the sentence. Applicant submits an amendment to claim 16 herein to add a period at the end of the sentence.

In the Office Action at p. 6, ¶ 9, Examiner objects to claim 24 for missing a word or phrase during the articulation “portions be homogenous”. Applicant submits an amendment to claim 24 herein to amend the phrase to state “portions being homogeneous”.

Rejections Under 35 U.S.C. § 112 ¶ 2

In the Office Action, at p. 7, Examiner states that claims 3, 7, 10-11 and 16-17 are rejected under 35 U.S.C § 112, ¶ 2 as being indefinite and failing to particularly point out and distinctly claim the subject matter of the application. Examiner states that claim 3 is rejected because there is insufficient antecedent basis for the claim feature of “sinuous members.”

Applicant submits an amendment herein so that claim 3 is dependent from claim 2, which sets out antecedent basis for a sinuous member. Applicant respectfully requests that Examiner reconsider and allow amended claim 3.

Examiner states that claim 7 is rejected because there is insufficient antecedent basis for the claim feature of “said endless chain.” Applicant submits an amendment herein so that claim 7 refers to “said endless sinuous member.” Applicant respectfully requests that Examiner reconsider and allow amended claim 7.

Examiner states that claim 10 is rejected because there is insufficient antecedent basis for the claim feature of “the means for supplying energy to propel...arrays.” Applicant submits an amendment herein so that claim 10 depends from claim 12, which sets out antecedent basis for said means. Applicant respectfully requests that Examiner reconsider and allow amended claim 10.

Examiner does not state a basis for the § 112 ¶ 2 rejection of claim 11. However, Applicant submits an amendment herein so that claim 11 depends from claim 12, which sets out antecedent basis for claim 11. Applicant respectfully requests that Examiner reconsider and allow amended claim 11.

Examiner states that claims 16 and 17 are rejected because the recitation of “optional” renders the claim indefinite. Applicant submits an amendment herein so that claims 16 and 17

no longer recite the term optional. Applicant respectfully requests that Examiner reconsider and allow amended claim 16 and 17.

Rejections Under 35 U.S.C. §§ 102(b) and 103(a)

In the Office Action, Examiner states that claims 1, 4-5, 23, 31, 34-36 and 41 are rejected under 35 U.S.C § 102(b) as being anticipated by U.S. Patent No. 1,429,187 (“Pocock”); claims 1-2, 4-5, 7-9, 13, 15-18, 22-23, 27-32, 36 and 41 are rejected under 35 U.S.C § 102(b) as being anticipated by U.S. Patent No. 2,515,966 (“Polisena”); claims 13, 19-21, 24-26 and 38-39 are rejected under 35 U.S.C § 103(a) as being unpatentable over Pocock or Polisena; claims 13, 15, 22 and 32 are rejected under 35 U.S.C § 103(a) as being unpatentable over Polisena; and claim 6 is rejected under 35 U.S.C § 103(a) as being unpatentable over Polisena or Pocock or U.S. Patent No. 6,282,877 (“Yoder”).

As the rejections are stated to be applicable to independent claims 1, 13, 34 and 35, the rejections are respectively traversed at least for the following reasons. Claim 1 and 35 both have a feature of the “arrays being generally upstanding”, claim 13 has the feature of “both arrays moving upwardly in a region in which said arrays are mutually facing *above* plants in a growing field from which fruits are to be harvested”, claim 34 has the feature of “webs being generally upstanding.” None of the cited references, alone or in combination, disclose or suggest these features of the independent claims.

As shown in Figure 1 of Polisens and Figure 2 of Pocock, for example, a substantially horizontal portion is utilized where fruit is horizontally gathered and carried substantially horizontally and then deposited in an adjacent receptacle positioned at the destination end of the horizontal portion (or in the case of Pocock, under the destination end). These portion are

neither “upstanding” nor are “both arrays moving upwardly in a region in which said arrays are mutually facing *above* plants in a growing field from which fruits are to be harvested.” In the cited references, the facing portions are over plants from which the fruit has already been harvested. By contrast, depending on the particular independent claim, the current inventions of independent claims 1, 13, 34 and 35 utilize “upstanding webs” and/or “upstanding arrays” and/or facing portions that are above fruit to be harvested (see Figures 5 and 11 for a nonlimiting illustration).

An upstanding web and/or array present an advantage not contemplated by the cited references. For example, it is seen in Figure 1 of Polisens and Figure 2 of Pocock, that when the machine is moving over a specific plant to be harvested a very limited number of fingers will actually come in contact with the specific plant; usually a single pair of fingers contact the plant before the fingered area is moved past the plant, moving on to the next plant and thereby leaving unharvested fruit if the fruit was not harvested in one try.

By contrast, in the present invention, an array is positioned upstanding so that one has the option of utilizing a *series* of horizontal finger pairs, whereby a plant that is not harvested by the first finger pair, might be harvested by the next finger pair, and the next finger pair, and so on. The structures and methods of the cited references are not adapted for this type of optional functionality. The positioning of the cited prior art, which is not “upward” or so the facing portions are “above the fruit to be harvested,” is flawed in that the portions are not positioned to optionally utilize a series of fingered pairs and get the proverbial “two bites at the apple.”

Additionally and independently, not only is the unique positioning adapted for enhanced stripping features, but the unique positioning is also adapted for enhanced post-stripping features. For example, whereas the cited references disclose portions that carry the fruit in a substantially

horizontal manner and then *drop* the fruit into a receptacle, the present invention delivers stripped fruit to a an uncluttered destination *above* the arrays, webs, and/or paths. In this respect, the fruit is delivered to a position optimized for additional and optional manipulation of the fruit (such as by a blower, conveyor belt, other, etc.).

For at least the above-stated reasons, Applicant respectfully requests Examiner to reconsider and allow independent claims 1, 13, 34 and 35.

As applicable to dependent claims 2, 4-9, 15-32, 36 and 38-40, all of these rejections are respectively traversed at least for the following reasons. All of dependent claims depend either directly or indirectly from one of independent claims 1, 12, 13, 34 or 35. As described above, Applicant believes that all independent claims 1, 13, 34 and 35 are patentable (and independent claim 12 is allowed) and Applicant hence believes that claims 2, 4-9, 15-32, 36 and 38-40 are patentable at least by virtue of their dependency from a patentable independent claim. For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent claims 2, 4-9, 15-32, 36 and 38-40. Applicant reserves the right to argue the patentability of these claims on other grounds in this and/or another proceeding.

The rejections as stated applicable to independent claim 41 are rendered moot, because Applicant has herein cancelled claim 41. Applicant reserves the right to re-submit and argue the patentability of claim 41 in this and/or another proceeding

CONCLUSION

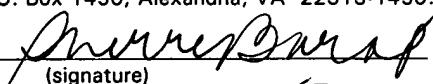
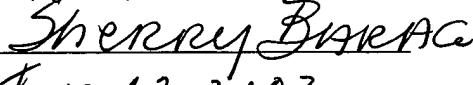
Applicant believes that Applicant has fully responded to the Examiner's concerns and that all of the claims are in condition for allowance. Applicant respectfully requests reconsideration and immediate allowance of all claims.

Applicant requests that any questions concerning this matter be directed to the undersigned at (215) 299-2135.

Respectfully submitted,

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